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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HESS, DANIEL A

ART UNIT PAPER NUMBER

2876

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/741,208

Applicant(s)

HENZERLING, DAVID P.

Examiner

Daniel A. Hess

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/28/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This action is in response to applicant's Amendment and Request for Continued Examination (RCE) filed 11/28/2005, which have been placed in the electronic file of record.

Summary Remarks

The applicant has amended the claims to recite that peer-to-peer communication for the exchange of music takes place in an automobile.

The essence of the Examiner's position is that

(1) Operating a peer-to-peer network for the sake of exchanging files such as music files was known outside of the realm of automobiles, including as functionality within the Windows operating system.

(2) Mobile networks, and portable computers (such as laptops) that operate on a wireless network render obvious the step of moving such capability to an automobile (or, for that matter, any place that is reachable by a mobile network).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2876

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 6-8, 11, 14-17, 20, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Windows 95 networking capability (as illustrated in the Internet article “Building a Windows 95 Peer to Peer network” by Brother, Inc., of record), in view of Yuan (US 6,496,704). The Internet article was located at the website http://www.brother.com/european/networking/chapter3/chapter3_networking-peer-to-peer.html which can be dated using the website <http://www.archive.org> to Feb. 18th, 1999.

Re claims 1, 8, 11, 14-17, 20, 25:

The Internet article “Building a Windows 95 Peer to Peer network” shows that the common configuration of two computers exchanging data on a Windows network meets the definition of peer-to-peer communication. Thus, for example, one may have two laptop computers connected together on a local network wireless network using, for example, Windows™ networking. Each laptop acts as a music player, capable of playing music files (by running music player software). One can directly receive a file from a remote device without prior knowledge of whether that file exists on the hard drive of that second computer by, for example, using Windows™ networking to perform a hard drive search for a particular file on a hard drive that is physically located on the other PC. **See for example page 13 of the article.** **The ‘testshare’ folder, which is actually on another computer, is closed, and thus its files cannot be seen (i.e. there is no a priori knowledge of its contents). This folder is a**

Art Unit: 2876

communication path to the other computer. One can perform a search of this folder for a particular music file. Then, if the file turns up, one can save it onto a local hard drive.

Lacking is a teaching to operate such a network from within an automobile.

Yuan teaches data transfer technology in the realm of mobile networking, including (see abstract) Mobile Internet Protocol. Mobile IP means that a computer such as a laptop can maintain a single IP address even as it moves. By having a single IP address, it would therefore be usable with Windows networking as described in the Internet article above. Yuan explicitly states (column 6, lines 5-15) that a laptop within an automobile is a possibility with such networks: “A mobile data device, as the term is employed herein, may be understood to encompass any movable system capable of generating or processing data, and may include any movable data processing system, such as a **lap-top computer**, a hand-held computing system, a computer system **adapted for being carried on-board a vehicle** such as a truck, or a taxi, or any other data device capable of moving from a first location to a second location.”

Note that the words ‘transceiver associated with a first automobile’ are be interpreted broadly to mean, simply, that one operates a laptop wirelessly within a car.

In view of Yuan’s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention use peer-to-peer file sharing of files such as music files in the old and well-known mobile platform of a laptop in an automobile as taught by Yuan because thus one can access music files beyond what one has stored locally.

Art Unit: 2876

Re claim 2: Non-volatile memory would include the hard drive of a laptop computer.

See the discussion re claim 1, above.

Re claims 6 and 7: It has already been discussed (see discussion re claim 1 above) that a node on a Windows peer-to-peer network could be a laptop operating wirelessly from within a car. Similarly, a second node could be operating wirelessly within a car, for the same motivations of mobility combined with access to data beyond what one has stored locally.

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Building a Windows 95 Peer to Peer network” by Brother, Inc., as modified by Yuan as applied to claim 1 above, in view of Jigour et al. (Us 5,877,975).

Windows 95™ as modified by Stewart as applied to claim 1 above fails to teach the use of flash memory.

Jigour et al. teaches (throughout) the use of flash memory units which can plug into a PC.

In view of Jigour et al.’s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to store a music file the old and well-known flash memory of Jigour et al. because this could make such files available to, for example, a portable mp3 player.

Claims 4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over “Building a Windows 95 Peer to Peer network” by Brother, Inc., as modified by Yuan as applied to claim 1 above, in view of van Zoest et al. (US 6,496,802).

Re claim 4: Windows 95™ as modified by Yuan as applied to claim 1 above fails to teach or fairly suggest uploading a music file to an Internet service provider.

Van Zoest et al. teaching (entire document ; especially column 1 ; column 15, line 9) uploading mp3s to and downloading from an Internet service provider.

In view of van Zoest et al.'s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known uploading of files to an ISP because can make them available for access later or at another computer or networked device.

Re claims 18 and 19: See discussion re claim 4 and note that van Zoest et al.'s system is indeed a database for which there is access to files going both ways (download and upload). If a user accesses van Zoest et al.'s system via a wireless LAN, the claim limitations are met.

Claims 9, 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Building a Windows 95 Peer to Peer network" by Brother, Inc., as modified by Yuan as applied to claim 1 above, in view of Tosaya (US 6,323,893).

Windows 95™ as modified by Yuan as applied to claim 1 fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

Claims 10 and 27 are rejected under 35 U.S.C. 103(a) as unpatentable over “Building a Windows 95 Peer to Peer network” by Brother, Inc., as modified by Yuan as applied to claim 1 above, in view of and further in view of Segal et al. (US 6,167,251).

Windows 95™ as modified by Yuan as applied to claim 1 fails to fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal’s teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windows 95™ as modified by Yuan as applied to claim 1 above, in view of Dutta et al. (US 6,636,854).

Windows 95™ as modified by Stewart as applied to claim 1 fails to enable the type of peer-to-peer communication embodied in claims 21-25.

Dutta et al. (see especially column 5, line 15 to column 6, line 35) describes the various aspects of ‘Gnutella,’ a peer-to-peer file sharing system having all of the peer-to-peer aspects recited in claims 21-24.

In view of Dutta et al.’s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to run the old and well-known ‘Gnutella’ software on

Art Unit: 2876

the wireless LAN of Windows 95™ as modified by Stewart as applied to claim 1, because this gives a user at a particular device access to more music files than they otherwise would have.

Response to Amendment

The examiner notes that the words 'transceiver associated with a first automobile' are be interpreted broadly to mean, simply, that one operates a laptop wirelessly within a car.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A. Hess whose telephone number is (571) 272-2392. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel A Hess

Application/Control Number: 09/741,208
Art Unit: 2876

Page 9

1/21/2006

Examiner
Art Unit 2876

